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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,686	03/23/2001	Eugenie Charriere	004900-194	3078
21839	7590	03/22/2004	EXAMINER	
BURNS DOANE SWECKER & MATHIS L L P			SERGENT, RABON A	
POST OFFICE BOX 1404			ART UNIT	PAPER NUMBER
ALEXANDRIA, VA 22313-1404			1711	

DATE MAILED: 03/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/744,686

Applicant(s)

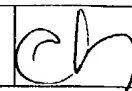
CHARRIERE ET AL.

Examiner

Rabon Sergeant

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-30 and 33-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-30 and 33-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on November 4, 2003 has been entered.
2. Claims 17-30 and 33-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Firstly, the subject matter of claims 37 and 38 lacks antecedence from claims 17 and 35, respectively. The subject matter of the claims no longer pertains to amended claims 17 and 35.

Secondly, the subject matter of claim 27 fails to further limit claim 17, because the triazole/methyl ethyl ketoxime pair of claim 27 has been excluded by the amendment to claim 17.

Thirdly, the conditions set forth within the last eight lines of claim 17 and the last six lines of claim 35 should be recited before the provisos, because the claims are confusing with respect to whether the conditions somehow pertain only to the provisos.

Fourthly, despite applicants' response, the position is taken that the language, "which is released first, that is, the lowest temperature", within the last line of claim 17 is ambiguous. The language is simply not clear enough or is too limited to clearly set forth applicants' intended concept. Applicants should more clearly set forth what the "lowest temperature" refers to.

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Lastly, despite applicants' response, the position is maintained that the language, "very close", renders the claims indefinite. The language is subjective, in terms of what constitutes "close" and how "very" is to modify "close". The examiner has considered applicants' argument and has reviewed the parts of the specification pertaining to the octanol test; however, the position is maintained that the specification, as filed, provides no guidance in defining "very close". Applicants' argument that the specification provides a standard for determining what constitutes "very close" is simply not supported.

3. Claims 37 and 38 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Support has not been provided for the subject matter of the claims.

4. The prior art rejections have been withdrawn in view of applicant's amendment and response.

Any inquiry concerning this communication should be directed to R. Sergent at telephone number (571) 272-1079.

R. Sergent

March 12, 2004


RABON SERGENT
PRIMARY EXAMINER